

Ameritech's submission also describes its proposal for the second phase of the trial using multiple switches.²⁹ In its comments, AT&T proposes a substantially more robust second phase trial designed to determine whether the platform is ready for commercial use. Specifically, AT&T's experts assert that it is necessary to conduct testing which includes, among other features, orders with a larger number of line class codes, and switches located in different states.³⁰ The Department understands that the parties are still in the process of attempting to agree upon a test plan for the phase two trial, which would obviously be relevant to making a determination of Ameritech's practical ability to provision the network platform. Thus, Ameritech has yet to demonstrate its practical ability to provide these elements as required by the checklist.³¹

B. Wholesale Support Processes for Provision
of Unbundled Network Elements and Resale Services

Efficient wholesale support processes -- those manual and electronic processes, including access to OSS functions, that provide competing carriers with meaningful access to resale services, unbundled elements, and other items required by Section 251 and the checklist of

²⁹ Kocher Aff. ¶¶ 72-73.

³⁰ Affidavit of Robert V. Falcone and Maureen E. Gerson ¶¶ 29-30, attached to AT&T Comments, Exhibit I.

³¹ Without a completed trial to review, the Department cannot assess the technical capability of Ameritech's systems or the saliency of other commenters' concerns. *See, e.g.*, Comments of LCI International Telecom Corp. in Opposition to Ameritech Michigan's Section 271 Application, CC Docket 97-137, at 7-9 (June 10, 1997) ("LCI Comments") (noting that Ameritech's technical trial does not allow for full participation of other carriers).

Section 271 -- are of critical importance in opening local markets to competition. Where high volumes of transactions are expected for particular processes, the Department has highlighted two general areas where automation is likely to be necessary to a practical offering: the interfaces between a BOC and competing carriers; and, to a great extent, the interaction of these interfaces with a BOC's OSSs. Experiences in local competition to date make it clear that successful commercial operation is by far the most persuasive evidence that these wholesale support processes provide needed functionality and will operate at forecasted volume levels.

The Department finds that, while Ameritech has clearly made progress in this area, it has not yet fully complied with the competitive checklist's standard for the wholesale support processes necessary to provide adequate resale services and access to unbundled elements. Appendix A to these comments provides a more detailed analysis of Ameritech's wholesale support processes, but we provide below a general overview of that analysis.

As an initial matter, the Department agrees that Ameritech has generally followed what we believe to be the appropriate approach for demonstrating that it can provide adequate resale services, unbundled elements, and other checklist items -- i.e., Ameritech has sought to provide concrete evidence, rather than paper promises. Thus, in its application, Ameritech provides detailed internal and carrier-to-carrier test results of automated processes, allowing all interested parties to lend their expertise to the Commission's analysis. In many cases, Ameritech has actively sought out testing with competing carriers and worked through problems as they have inevitably occurred. In particular, Ameritech has identified shortcomings in the operation of its

automated and manual processes, the absence of which at this nascent stage would itself raise suspicions, and provided detailed assessments of their causes and proposed solutions.

Ameritech's approach is clearly a desirable, procompetitive way to proceed. The Department would urge other BOCs to adopt the same approach. In order to facilitate competition effectively, complex systems must work in practice, not merely in theory, a point that Ameritech's extensive efforts clearly reflect. Nevertheless, on the basis of the evidence currently in the record, Ameritech has not satisfied its burden of demonstrating the successful operation of its POTS resale preordering, ordering, and provisioning processes. Further commercial use and clearer reporting of the results of such use, when supported by the type of detailed evidence Ameritech has already provided, will be needed to establish that Ameritech has satisfied the competitive checklist with regard to providing adequate resale services.

With respect to its provision of unbundled local loops, Ameritech's performance is the subject of considerable dispute. While Ameritech has been able to provision a significant number of loops, and competitors have been able to compete to a limited degree in a few local markets using such loops, Ameritech's largest loop customer, Brooks Fiber, disputes Ameritech's ability to meet due dates and installation intervals. It is the Department's understanding, however, that Ameritech and Brooks are progressing in establishing a clearer understanding of Ameritech's performance, which should permit a better assessment of Ameritech's performance at a later date.

Finally, as is reflected in the discussion above in Section III.A, the Department believes

further testing and operation of Ameritech's ability to provide local switching in combination with other elements is necessary. The results of trials currently underway or planned should shed important light on Ameritech's abilities in this area. Further discussion of these and other remaining issues is provided in Appendix A as well as in Section V.B.

C. Adequacy of Interconnection Trunking Facilities

The competitive checklist requires BOCs to provide "[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)," which set forth the relevant technical and pricing standards. Section 271(c)(2)(B)(i). In light of the concerns outlined below, we conclude that Ameritech has failed to provide sufficient evidence to demonstrate that it is providing adequate interconnection in accordance with the technical standards set forth in the 1996 Act.

It is undisputed that Ameritech is exchanging significant volumes of traffic with CLECs through end office integration trunks. It is disputed, however, whether Ameritech provides interconnection "that is at least equal in quality to that provided by the local exchange carrier to itself..." (Section 251 (c)(2)(C)) and "on rates, terms and conditions that are just, reasonable, and nondiscriminatory" (Section 251 (c)(3)) as required by the 1996 Act. The MPSC found that Ameritech provides interconnection, in that it exchanges traffic with CLECs pursuant to interconnection agreements, but it made no determination as to whether the interconnection provided satisfied the quality and nondiscrimination requirements of the 1996 Act and the

Commission's Local Competition Order.³² Other relevant regulatory proceedings have similarly failed to resolve whether Ameritech is providing interconnection at parity.³³

Ameritech's interconnection performance data clearly show that the end office integration (EOI) trunks used by CLECs to interconnect with Ameritech experience higher blocking rates than do the trunks used within Ameritech's own network. During March and April of 1997, 9.4% of the EOI interLATA trunk groups were blocking more than 2% of the traffic routed to the group. Over the same period, 6.6% of the EOI trunk groups used to transport local and intraLATA calls exceeded the 2% threshold that Ameritech reports.³⁴ The comparable blocking rate for Ameritech retail was 1.5%. Mickens Aff. ¶ 49.

Because the record is clear that the EOI trunk groups are blocked more frequently than Ameritech's retail trunks, the relevant question is whether the difference between the competitors' experience and Ameritech's own retail blocking rate is sufficiently significant as to

³² Local Competition Order at ¶¶ 221-225. The MPSC specifically noted that Brooks Fiber disputes the quality of the interconnection it is receiving from Ameritech, but it did not provide any evaluation of this dispute. MPSC Consultation at 12. Further, it found that Ameritech's performance measures for interconnection are inadequate because they "do not distinguish things over which Ameritech has control so deviations from the goal can be explained away." *Id.* at 23-24, 26.

³³ In finding that Ameritech is providing interconnection, the Illinois HEPO provided no discussion of Ameritech's interconnection performance. ICC Second HEPO at 23-24. Likewise, the order from the PSCW evaluating Ameritech's SGAT in that state does not address performance issues. PSCW Second Order at 13-14.

³⁴ Affidavit of Warren Mickens ¶ 49 ("Mickens Aff."), attached to Ameritech Brief, Volume 2.10. The Department notes that some of the charts and underlying raw data presented in Schedule 17 of Mickens proprietary testimony are inconsistent.

deviate from Section 251(c)(2)'s mandate that CLECs be afforded interconnection arrangements on "nondiscriminatory" terms. On this point, Ameritech asserts that EOI traffic tends to be more volatile than Ameritech's retail traffic and concludes that because of this volatility, the disparity between EOI trunk blocking rates and Ameritech's retail blocking rates is not a "cause for concern." *Id.* This response alone does not address our concern, especially in light of the fact that lower target trunk blockage rates have been established through negotiations with CLECs,³⁵ and that two of the three CLECs that Ameritech relies upon in this proceeding, Brooks Fiber and TCG, have offered specific complaints about excessive trunk blockage.³⁶ To the extent that Ameritech's characterization of the varying nature of the CLECs' calls or trunk groups might explain the different rates of call blockage, the record currently contains no evidence in support of this claim -- i.e., that Ameritech's internal performance standards vary by the volatility of traffic on the trunk group. Consequently, the Department cannot conclude, based upon the

³⁵ The AT&T contract, which Ameritech also relies upon in this proceeding, calls for blocking rates of less than 1%. AT&T Interconnection Agreement at Schedule 3.8-1 ("AT&T/Ameritech-Michigan Interconnection Agreement"), attached to Ameritech Brief, Volume 1.2. Importantly, there is nothing in the contract to suggest that higher blocking rates are acceptable while traffic volumes are low. In fact, the AT&T contract calls for interconnection that is "equal in quality" to that provided by Ameritech to itself, and defines "equal in quality" to mean "the same technical criteria and service standards" that Ameritech uses within its own network. *Id.* at §3.6. Ameritech has not attempted to demonstrate that the relatively high blocking rates CLECs have experienced satisfy the technical criteria and service standards that Ameritech uses internally.

³⁶ TCG Comments at 4-8; Affidavit of Michael Pelletier ¶¶ 10-24 ("Pelletier Aff."), attached to TCG Comments, Exhibit A; Brooks Opposition at 28-29; and Response to Ameritech Michigan's Submission of Additional Information in MPSC Case No. U-11104 by Brooks Fiber Communications of Michigan, Inc., at 3 (Apr. 15, 1997).

record in this proceeding, that Ameritech has satisfied the checklist standard for providing adequate interconnection.

Ameritech further states that CLECs have been reluctant to provide forecast data and that their failure to do so explains much of the blocking data disparity. The Department agrees that EOI trunk blocking rates could potentially be reduced with improved traffic forecasts, and we would urge CLECs to provide such data to the fullest extent possible. Nonetheless, we recognize that accurate prediction is not always possible, and, in those situations where predictions are unavailable or are inaccurate and blocking occurs, there should be a timely, successful resolution. The Mayer affidavit states that Ameritech's procedures for provisioning EOI trunks are being changed.³⁷ With only a cursory description of those changes in the record, and no performance data to show a lasting improvement in blocking rates, however, it is too early to determine whether these changes will be sufficient to establish compliance with this checklist item.

IV. Ameritech's Compliance with Section 272

Section 272 prohibits Ameritech from providing in-region interLATA service unless it does so through a separate affiliate for at least three years after entry, and also complies with various nondiscrimination obligations. These requirements are necessary (though not sufficient) conditions to protect against anticompetitive behavior by the BOC upon its entry into the

³⁷ Affidavit of John B. Mayer ¶ 40 ("Mayer Aff."), attached to Ameritech Brief, Volume 2.8.

interLATA market.³⁸

Ameritech asserts that it has complied and will continue to comply fully with the requirements of this section, including both accounting and non-accounting safeguards. Commenters, however, have pointed out apparent inconsistencies between Ameritech's representations in this docket and representations it previously has made in other dockets in Michigan and other states in its region.³⁹ These comments note the lack of information available regarding transactions between Ameritech and its long-distance affiliate, ACI.⁴⁰ This lack of information raises questions about whether Ameritech has sufficiently documented the affiliated transactions to allow detection of discrimination, cross-subsidization, or any other anticompetitive behavior.

With regard to at least one aspect of its relationship with ACI, Ameritech has made a commitment that the Department finds to be significant. In the affidavits of Patrick J. Earley and

³⁸ See Reply Comments of the United States Department of Justice, CC Docket No. 96-149, FCC 96-489, at 1-4 (Aug. 30, 1996).

³⁹ See, e.g., TCG Comments at 27-39; Comments of AT&T in Opposition to Ameritech's Section 271 Application For Michigan, CC Docket 97-137, at 37-39 (June 10, 1997) ("AT&T Comments"); and CompTel Opposition at 31-34.

⁴⁰ Affidavit of Lila K. McClelland and Douglas K. Goodrich ¶¶ 24-25 ("McClelland and Goodrich Aff."), attached to AT&T Comments, Exhibit O (quoting Letter from Lynn S. Starr, Ameritech to Regina Keeney, FCC, dated Apr. 21, 1997); *id.* at ¶¶ 32-33 [citing Affidavit of Paul LaSchiazza ¶ 11 ("LaSchiazza Aff."), attached to Ameritech Brief, Volume 2.7 and Affidavit of Richard E. Shutter ¶ 19, attached to Ameritech Brief, Volume 2.14.]. The business of ACI and all Ameritech telephone operating companies is controlled by Ameritech. Petition to Deny by Sprint Communications Company L.P., CC Docket 97-137, at 25 (June 10, 1997) ("Sprint Petition"); TCG Comments at 31-32, 34.

Paul V. LaSchiazza, Ameritech states that although certain customers have authorized Ameritech Michigan to share Customer Proprietary Network Information (CPNI) with Ameritech affiliates, it has not disclosed any CPNI to ACI and that it will refrain from disclosing CPNI to ACI unless and until (1) ACI has itself obtained customer authorization to receive the information and/or (2) the FCC rules in its pending CC Docket No. 96-115 [CPNI] that such information may be shared. Affidavit of Patrick J. Earley ¶ 48 ("Earley Aff."), attached to Ameritech Brief, Volume 2.2; LaSchiazza Aff. ¶¶ 22, 35. Moreover, Ameritech commits to not using CPNI on any outbound joint marketing it may do for ACI, unless one of the two above conditions apply.⁴¹ We support this commitment and believe it to be necessary given the present circumstances.

V. Evaluation under the Department's Standard

The Department has concluded that BOC in-region interLATA entry should be permitted only when the local exchange and exchange access markets in a state have been fully and irreversibly opened to competition.⁴² This standard seeks to ensure that the barriers to

⁴¹ Given Ameritech's announced intent to market for ACI, this corollary commitment is necessary in order for the underlying promise to have effective meaning. See McClelland and Goodrich Aff. ¶ 39 (The ACI/Ameritech Michigan Marketing and Sales Agreement "states that Ameritech Michigan may identify potential customers who may benefit from subscribing to and using ACI's products. If Ameritech utilizes its own Customer Proprietary Network Information (CPNI) to identify such potential customers, how does Ameritech intend to establish and charge ACI for the fair market value of this data?").

⁴² This open market standard and its relationship with the Commission's public interest inquiry is explicated more fully in the DOJ Oklahoma Evaluation at vi-vii and 36-51, and in the Schwartz Affidavit.

competition that Congress sought to eliminate in the 1996 Act have in fact been fully eliminated and that there are objective criteria to ensure that barriers are not imposed after BOC entry into in-region interLATA services. The Department will evaluate, among other things, whether a BOC's wholesale support systems will permit the effective provisioning of resale services and unbundled elements, and whether the continued nondiscriminatory operation of these systems can be assured after approval of a Section 271 application. Ameritech itself recognizes that "[o]ne of the goals of the 1996 Act . . . is to open local exchange service to competition." Ameritech Brief at 62.

In applying this standard, the Department will consider whether all three entry paths contemplated by the 1996 Act -- facilities-based entry involving construction of new networks, use of the unbundled elements of the BOC's network, and resale of the BOC's services -- are fully and irreversibly open to competitive entry to serve both business and residential consumers. To do so, the Department will look first to the extent of actual local competition as evidence that local markets are open, and whether such entry is sufficiently broad-based to support a presumption of openness. If broad-based commercial entry involving all three entry paths has not occurred, the Department will examine competitive conditions more carefully, and consider whether significant barriers continue to impede the growth of competition, focusing particularly on the history of actual commercial entry. We will assess the import of such entry as a means of demonstrating whether the market is open and establishing relevant performance benchmarks, but not as a way of requiring any specific level of local competition. Our standard thus seeks to

ensure that competitors presently receive -- and regulators can continue to expect (based on established performance benchmarks) -- a meaningful opportunity to compete.

While a limited amount of entry is occurring today under all three entry paths in local exchange markets in Michigan, there is not yet enough local competition in Michigan to warrant a general presumption of openness. Rather, it is necessary to investigate carefully whether any remaining barriers would impede the growth of local competition in Michigan. From the preceding evaluation of checklist compliance, however, it appears that some barriers remain in Michigan. In addition, as discussed below, Ameritech's lack of fully adequate performance measures and enforceable performance benchmarks suggests that any opening to local competition in Michigan may not yet be properly described as being irreversible.

A. Competition Exists in Local Exchange and Exchange Access
Markets in Michigan But Is Not Yet Sufficient to Warrant
any Presumption that Local Markets are Fully and Irreversibly Open

As Ameritech explains, Michigan took its first steps to authorize local competition in 1991, and in 1995, a year before the passage of the Telecommunications Act, when it substantially amended its own telecommunications laws to open local markets and impose certain unbundling and resale obligations on Ameritech. Mich. Comp. Laws, §§ 484.2103, .2355-60, .2363 (1996). These legal reforms, coupled with the market-opening measures of the 1996 Act and the steps Ameritech has taken, have produced encouraging signs of competitive entry on a small scale, as reviewed in more detail in Appendix B. Twenty-two competitive providers have been certified as local carriers, and other applications are pending. Ameritech

Brief at 74.⁴³ The Department has identified seven firms that are operational competing providers of local exchange service in Michigan, on either a facilities or resale basis, serving business and in some cases residential subscribers. It appears from the evidence provided by Ameritech and its competitors that total lines actually served by competitive providers in Michigan are still no more than 70,000-80,000. A substantial part of this total represents separate facilities of competitors, although most customer lines are served through a combination of the competitors' separate facilities and Ameritech's unbundled elements, or by resale of Ameritech's services. The local competitive entry to date is primarily located in the two largest urban areas, Grand Rapids and Detroit, but competitors have facilities in several other communities, including Lansing, Ann Arbor, and Traverse City.

Ameritech remains, however, by far the dominant provider of local exchange services, with a near monopoly in its service areas.⁴⁴ Most parts of Michigan still have no local competition, save possibly on a resale basis, since such CLEC competition as exists in Michigan is overwhelmingly concentrated in parts of the cities of Grand Rapids and Detroit and is primarily focused on business customers. The greatest degree of local competition exists in the Grand Rapids metropolitan area, where Brooks Fiber and its predecessor, City Signal, have been operating for several years.

⁴³ See also MPSC Consultation at 9 ("the MPSC has now authorized twenty-four applicants to provide basic local exchange service").

⁴⁴ Comparative data analyzing Ameritech's market position and that of its competitors in Michigan is contained in Appendix B.

Given this level of competition, we cannot presume that no barriers to entry exist. At the same time, given the successful small-scale entry that has occurred using all three paths, we cannot presume that the local markets necessarily remain closed either. In such cases, the Department's standard calls for a more careful analysis of opportunities for competitors' future entry and expansion.⁴⁵

B. Need for Further Measures to Open Local Markets

The competitive entry that has occurred in Michigan, though limited in scope, has been helpful to the process of opening local markets in Michigan. Many of the legal issues that will affect competitive opportunities have been resolved. Ameritech and several of the new entrants have finalized access and interconnection agreements and developed processes through which most of the competitive checklist elements have been furnished to the entrants to some limited extent. The initial experience with competition has also contributed to the development and improvement of the wholesale support processes that will be needed to sustain competition in the future. Indeed, the initial commercial use of Ameritech's wholesale support processes to provide and maintain unbundled elements and resale services has revealed the kind of real-world shortcomings that can be expected to arise in developing the necessary processes, and has allowed Ameritech to make many of the necessary corrections.

Despite this progress, the record submitted by Ameritech does not demonstrate that local markets in Michigan are fully and irreversibly open to competition. The obstacles to competitive

⁴⁵ DOJ Oklahoma Evaluation at 44.

entry and expansion that remain could readily impede the growth of competition in Michigan.

Specifically, building on our analysis thus far, we identify the following remaining obstacles: (1) the unavailability of unbundled switching and shared transport, which are needed to support entry through the "network platform"; (2) continuing performance problems with respect to some of Ameritech's wholesale support systems, which could limit the ability of entrants to obtain resale services and unbundled elements at reasonably foreseeable levels of demand; (3) inadequate performance measures of some of Ameritech's wholesale support systems, which both preclude a determination that those systems are adequate today, and which will hamper efforts to ensure continued acceptable performance after Section 271 authority has been granted to Ameritech; and (4) troublesome indications of high blockage rates in end office integration trunks, which potentially could impair the quality of service offered by facilities-based competitors.

The Department has already discussed the compliance problems with respect to most of these issues in detail in Part III and Appendix A. It is important to appreciate, however, the competitive significance of the failure to provide these items, which precludes a determination that approval of Ameritech's application would be consistent with the public interest. With respect to unbundled switching and shared transport (as defined by the relevant orders of the Commission and the MPSC), Ameritech's failure to make these checklist requirements practically available to its competitors forecloses an important entry vehicle involving the "network platform." Given the economic and technical opportunities afforded by this entry strategy, the "network platform" provides an important entry vehicle for several potential

competitors.⁴⁶

The Department is also concerned about Ameritech's failure to provide adequate trunking facilities for interconnection, because inadequate interconnection is likely to disproportionately disadvantage CLECs in a competitive market. Only a small fraction of the incumbent's calls require transport through an interconnection trunk, while a much larger fraction of CLEC calls require such transport. Therefore, interconnection performance is of much greater consequence to the business success of CLECs than to the incumbent provider. Absent regulatory requirements, Ameritech has little or no incentive to adequately provision interconnection trunks to CLECs.⁴⁷ It follows that special emphasis should be placed on establishing satisfactory performance standards for interconnection trunks, and determining that the BOC is able to meet its own standards in actual competitive conditions, before Section 271 authority is granted.

The provisioning of wholesale support systems is central to the 1996 Act's promise of facilitating local competitive entry, since these systems are essential to enable the BOCs'

⁴⁶ For example, as the PSCW put it, "[u]nbundled network elements provide a competitive restraint on the incumbents' retail rates. With unbundled network elements priced based on cost, if Ameritech raises its retail rates excessively, competitors can chose to purchase unbundled elements and charge lower rates. In rural areas where facilities-based competition will likely be inefficient, the availability of unbundled network elements based upon cost may serve as an important restraint on retail rate increases." PSCW Second Order at 46.

⁴⁷ Local Competition Order at ¶ 218. Thus, the Department does not assume with Ameritech that "it is in the best interests of both Ameritech and the CLEC to ensure that there are sufficient facilities to handle traffic to and from the interconnected networks." Mayer Aff. ¶ 49. On the contrary, poor interconnection performance is likely to make CLECs' services less attractive to consumers, providing a competitive advantage to incumbents such as Ameritech. See Pelletier Aff. ¶ 24.

competitors to perform the necessary ordering, repair and billing functions to compete on any significant scale. The competitive significance of Ameritech's failure to demonstrate the adequacy of some of the wholesale support systems that will be required to provide adequate resale services and unbundled elements, at needed volumes and at acceptable levels of quality and timeliness, is, as discussed below, implicitly demonstrated by Ameritech's own competitive analysis.

Ameritech asserts that current market share data understate the competitive significance of CLECs because the existing facilities in Michigan, including the number of collocations in Ameritech end offices, indicate that a large share of Ameritech's customers are already "addressable" by competitors. According to Ameritech, this means that the local market is already sufficiently open to provide meaningful competitive pressure on the BOC. Joint Affidavit of Robert G. Harris and David J. Teece at 38-39 ("Harris and Teece Aff."), attached to Ameritech Brief, Volume 3.3. Ameritech's affiants argue that collocation in an Ameritech end office gives the collocater the ability to compete for every access line served by that end office, *id.* at 29-39, and based on this assertion, they claim that by the end of July competitors will be collocated in central offices that serve 42% of Ameritech Michigan's business lines (768,269 lines) and 29% of Ameritech Michigan's residential lines (948,221 lines).⁴⁸

⁴⁸ Harris and Teece Aff. at 35, Table III.2. As of April 30, 1997, CLECs were collocated in 37 Ameritech end offices and are expected to be in 42 by the end of July. These figures represent virtual collocation only, and the Department is unaware of any physical collocations currently established in Michigan.

Harris and Teece also assert that 52% of Ameritech Michigan's customers are addressable from fiber rings. *Id.* at 41, Table III.4. They reach this estimate by counting the share of access

Ameritech's "addressable market" argument assumes that CLECs have the "capacity to serve" all access lines served by collocated offices. *Id.* at 33. But capacity in this context is dependent not only on the capabilities of the CLECs, but also on the ability of Ameritech to provision unbundled loops in the collocated offices. Ameritech has not yet sufficiently demonstrated its ability to do so reliably and in significant volumes. In short, to establish that a large portion of the market is "addressable," Ameritech must first demonstrate that its processes for provisioning unbundled loops are reliable and scalable to levels substantially greater than current demand.⁴⁹ Ameritech's testimony shows, however, that the vast majority of the unbundled loops provisioned to date were ordered through manual processes,⁵⁰ which may be able to handle a very small volume of orders, but which are inherently unsuitable for dealing with large-scale competitive demand. At present, Brooks, the principal user of unbundled loops, is

lines that lie within 4 miles of CLEC fiber rings. Harris and Teece's estimate lacks any foundation in actual business practice. Experience shows that extensions to fiber rings are only economically viable for the very largest customers. The decisions of both TCG and MFS (the CLECs with the most extensive networks in Detroit) to concentrate on large customers in on-net buildings provides evidence of the difficulty and expense of extending the reach of a fiber ring. Such high use customers comprise a relatively small share of Ameritech's total access lines.

⁴⁹ Without such scaleability, CLECs will be able to serve only a small fraction of the market that Ameritech describes as "addressable." As of March 1997, Ameritech Michigan had provisioned 21,321 unbundled loops, which represents only 2.4% of the 895,458 lines served by offices in which competitors were collocated as of February 1997. Harris and Teece Aff. at 28, Table III.1, and 35, Table III.2. According to Harris and Teece, *id.* at 28, Table III.1, 2452 unbundled loops were provisioned from January to March 1997, a rate of 1226 per month. At this pace, it would take 23 years (280 months) to cut-over 20% of the 1.7 million lines Harris and Teece identify as "addressable" by the end of July.

⁵⁰ Ameritech's data shows that only about 20% of the loops in service region-wide were ordered using ASR. Mickens Aff. ¶ 23, Tab 25, Section 2, at 6.

using ASR (an electronic interface) to place orders, but it continues to have problems with sending orders and receiving firm order commitments. Thus, the analysis in Part III and Appendix A shows that Ameritech's systems have not yet been proven to be able to meet the levels of customer demand that Ameritech's affiants assume in claiming that the Michigan local markets are "addressable."

Finally, there are two additional issues implicated in the Department's competitive assessment that have not already been considered in Parts III and IV: inadequate performance measures and pricing. We discuss each below in more detail.

1. Inadequate Performance Measures

Performance benchmarks serve two important purposes: (1) demonstrating that the market is currently open to competition, and (2) facilitating meaningful post-entry oversight that ensures that the market opening is irreversible.⁵¹ To serve these twin purposes, the BOC must define the relevant measures, report the appropriate data on a regular basis, and derive the applicable benchmarks from the performance so measured. That is, performance measures must be defined to cover the critical functions and defined with sufficient specificity so that the thing

⁵¹ Application of SBC Communications, Inc., et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in the State of Oklahoma, Addendum to the Evaluation of the U.S. Department of Justice, CC Docket No. 97-121, at 4-5 (May 21, 1997). See also Schwartz Aff. ¶ 70 ("Absent meaningful benchmarks, penalty threats are problematic, because regulators and courts lack the information about what are reasonable implementation lags for new systems"); Id. at ¶ 77 ("[once] a track record is created for what constitutes 'good performance[,] [p]ost-entry safeguards -- regulatory, antitrust and contractual -- then become more effective at countering BOC attempts to reduce cooperations, since the performance benchmarks can help enforcers to prevent future backsliding and to extend these arrangements to other regions or other entrants.").

measured can be understood. The benchmarks, or specific levels of performance, can then be derived from a track record of reliable service established by the BOC, from analogy to the BOC's own retail operations, or perhaps from some other alternative that would ensure a consistent level of performance. As Ameritech itself understands, without "concrete, detailed performance standards and benchmarks for measuring Ameritech's compliance with its contractual obligations and impos[ing] penalties for noncompliance," Ameritech's statutory nondiscrimination obligations are only "abstractions." Ameritech Brief at 85.

In its comments to the Commission, the MPSC agreed with the above principles,⁵² and defined a set of 12 criteria by which performance standards can be developed. MPSC Consultation at 31-32. The MPSC concluded that "complete and appropriate performance standards have not as yet been adopted which would permit determinations to be made regarding nondiscriminatory access to OSS and other unbundled network elements." MPSC Consultation at 33-34.⁵³ Although we agree with the MPSC that Ameritech's progress in this regard is

⁵² The PSCW, in its recent order rejecting Ameritech's SGAT, also recognized the importance of performance reporting, stating: "The Statement does not, however, yet specify actual performance benchmarks or parity reports. Lack of finality on these items may not in and of itself be sufficient reason to reject a Statement, although significant inadequacies in performance benchmarks and parity reports would be sufficient. The Statement under review is still too vague to meet the Commission's performance benchmark requirement." PSCW Second Order at 26-27.

⁵³ Although Ameritech asserts that its "standards, benchmarks and reporting requirements [were] carefully reviewed and approved during Section 252 arbitrations by the MPSC," Ameritech Brief at 85, the MPSC's Consultation makes it clear that the standards, benchmarks and reporting requirements have not been approved for purposes of Section 271. See MPSC Consultation at 33-34.

incomplete, it is important to note that Ameritech has proposed and begun reporting a set of performance measures that addresses many of the important criteria covering both the operation of the interfaces and the operation of the OSS and provisioning systems.⁵⁴ We fully endorse Ameritech's commitment to measuring and reporting its performance and find its efforts to be significant, especially because Ameritech appears to have implemented specific business policies consistent with that commitment.⁵⁵ Moreover, Ameritech has committed to continuing its measuring and reporting obligations into the indefinite future. Nevertheless, as discussed in Appendix A, there are important gaps in the measures proposed by Ameritech -- namely, (1) a lack of sufficient clarity in certain of the definitions presented, and (2) a failure to measure and report actual installation intervals for resale, installation intervals for unbundled loops, comparative performance information for unbundled elements, and repeat reports for the maintenance and repair of unbundled elements. Thus, although Ameritech's performance measures appear adequate in other respects, Ameritech has yet to establish all of the necessary performance benchmarks to satisfy the Department's competitive assessment.⁵⁶

⁵⁴ Indeed, the Department cited Ameritech's set of measures favorably compared with SBC's in its previous comments on SBC's Oklahoma application. See generally DOJ Oklahoma Evaluation; Affidavit of Michael J. Friduss ("Friduss Aff."), Tab D to DOJ Oklahoma Evaluation.

⁵⁵ See Mickens Aff. ¶ 34 ("As other products and services develop, Ameritech will continue to modify its existing reports to incorporate additional performance measures and tracking reports.").

⁵⁶ In highlighting the need to measure and set appropriate benchmarks for actual installation intervals for resale, installation intervals for unbundled loops, comparative performance information for unbundled elements, and repeat reports for maintenance and repair

2. Lack of Final Cost-Based Pricing

Compliance with the cost-based pricing standards of the Telecommunications Act in Section 252(d) is also relevant to the Section 271 entry process, as Congress's repeated references to Section 252(d) in the checklist items of Section 271(c)(2)(B) makes plain. For the most part Ameritech's prices in Michigan are still interim and have not been finally determined to be cost-based, though a proceeding to set final prices is already well underway and a decision could issue in the near future.⁵⁷ See MPSC Consultation at 8-9. Ameritech's interim prices determined through arbitration in Michigan are for the most part relatively low compared with those of other BOCs and ILECs, and have not generated the volume of complaints about rate levels encountered in some other regions.⁵⁸ Questions have been raised, however, about some of

of unbundled elements, we do not mean to suggest that a particular numerical performance measure is necessary to satisfy our concern. But Ameritech has failed to provide any effective mechanism for measuring levels of performance and establishing benchmarks for some of the critical wholesale support processes that will enable us to conclude that the market has been irreversibly opened.

⁵⁷ Michigan Public Service Commission, On the Commission's Own Motion, to Consider the Total Service Long Run Incremental Costs and to Determine the Prices of Unbundled Network Elements, Interconnection Services, Resold Services, and Basic Local Exchange Services for Ameritech Michigan, Case No. U-11280 (initiated Dec. 12, 1996). See also Permanent Interconnection Arrangements, MPSC Case No. U-10860.

⁵⁸ A comparison with the FCC's proxy prices, though these are stayed on appeal, illustrates the relatively favorable interim prices that have been adopted for some key elements in Michigan. For example, Ameritech's Michigan AT&T agreement has recurring prices for a two-wire analog loop range from \$9.31 to \$14.67, compared with an FCC loop proxy of \$15.27 per month. Rates for end office local termination are .3637 cents per minute, below the FCC's maximum proxy price of .4 cents per minute. See Local Competition Order at Appendix D; AT&T/Ameritech-Michigan Interconnection Agreement at Pricing Schedule - Michigan (AM-1-020258 - 266). Ameritech had proposed substantially higher loop rates, ranging from \$15.61 to

Ameritech's prices, including certain non-recurring charges for components of the service platform and charges for physical collocation,⁵⁹ as well as the accuracy and completeness of Ameritech's cost studies. The most important pricing issue raised by numerous commentators, however, is the lack of any final determination of cost-based rates in Michigan.⁶⁰

Cost-based pricing for BOC facilities and services needed by competitors, such as interconnection, transport and termination and unbundled elements, is relevant to the Department's evaluation of any BOC entry application under Section 271. We are particularly concerned where only interim prices that have not been found to be cost-based are available.⁶¹ Competitors will be reluctant to commit their resources to enter a state on a large scale if the economic conditions they will face are highly uncertain and there are incentives for backsliding on the part of the BOC once interLATA relief is granted if final prices have not already been set.

\$21.33, but these were rejected by the Michigan arbitrator in the AT&T arbitration as unreasonably high. Decision of Arbitration Panel at 8 (Oct. 28, 1996), Application Vol. 4.1, AM-4-003637 [cited in Opposition of KMC Telecom, Inc. to Application of Ameritech Michigan to Provide InterLATA Services in Michigan, CC Docket No. 97-137, at 9 n.8 (June 10, 1997) ("KMC Opposition")].

⁵⁹ See, e.g., MCI Comments at 24-25.

⁶⁰ See, e.g., Motion to Dismiss by the Association for Local Telecommunications Services, CC Docket No. 97-137, at 19-22 (June 10, 1997); AT&T Comments at 28-29; Brooks Opposition at 10; CompTel Opposition at 14-16; KMC Opposition at 4-9; Comments of the Michigan Consumer Federation in Opposition to Ameritech Michigan's Application, CC Docket No. 97-137, at 9 (June 10, 1997); MCI Comments at 23-25; Sprint Petition at 13-17; TCG Comments at 13-17; Opposition of the Telecommunications Resellers Association, CC Docket No. 97-137, at 36-37 (June 10, 1997); Comments of Time Warner Communications Holdings, Inc., CC Docket No. 97-137, at 4-7 (June 10, 1997); and WorldCom Comments at 42-43.

⁶¹ See DOJ Oklahoma Evaluation at 61-63.

In the present circumstances, however, this pricing issue need not be resolved. As we have noted, there are other grounds for denying Ameritech's application, and, consequently, the Commission can await the results of the ongoing Michigan pricing docket, which should soon reach a decision,⁶² and which may resolve the concerns raised with regard to Ameritech's pricing of its wholesale inputs.

⁶² See MCI Comments at 23.

Conclusion

Ameritech has not yet fully complied with all of the requirements of the competitive checklist, nor has it taken all measures needed to ensure, consistent with the public interest, that local markets in Michigan are irreversibly open to competition. For these reasons, Ameritech's application for in-region interLATA entry in Michigan under Section 271 of the Telecommunications Act should be denied.

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APPENDIX A

Wholesale Support Processes and Performance Measures

In this Appendix, we examine Ameritech's wholesale support processes—the automated and manual processes required to make resale services and unbundled elements, among other items, meaningfully available to competitors—and performance measures under the criteria outlined in the Department's Evaluation regarding SBC's Section 271 Oklahoma application, filed on May 16, 1997.¹

A. Wholesale Support Processes Overview

In evaluating BOC applications under Section 271, the Department considers whether a BOC has made resale services and unbundled elements practicably available by providing them via wholesale support processes, including the critical access to OSS functions required by the Commission's rules, that: (1) provide needed functionality; and (2) are demonstrated to operate in a reliable, nondiscriminatory manner at reasonably foreseeable volumes, providing entrants with a meaningful opportunity to compete.² Ameritech echos this standard in its application, and in particular with reference to OSS access: "Ameritech should be required to show that its OSS interfaces are operational, i.e., that they have undergone sufficient testing or use to provide reasonable assurance that competitors can obtain, upon request, access to the OSS functions they need to enter the marketplace and serve customers successfully at reasonably foreseeable demand levels." Affidavit of Joseph A. Rogers ¶ 15 ("Rogers Aff."), attached to Ameritech Brief,

¹ See DOJ Oklahoma Evaluation at 26-30, Appendix A and Exhibit D (Affidavit of Michael J. Friduss).

² Appendix A to DOJ Oklahoma Evaluation at 68-71.